IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 13194 of 1998

Between:

M/s Indian Oil Corporation Ltd.,Malkapuram,

Visakhapatnam, rep. By its Chief Terminal Manager,

Sri Y.R.K.Murthy.

..... PETITIONER

AND

1. The Hon'ble Industrial Tribunal-Cum-Labour Court,

Visakhapatnam, rep. by its Chairman-cum-Presiding

Officer.

2. Chandra Mohan,

D.No.1-126/3, Srinivasanagar,

Malkapuram,Visakhapatnam.

3. The Union of India, rep. by its Secretary,

Ministry of Labour, Shram Mantralaya,New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for records of the 1st respondent in I.D.No.3/94 dt.4-12-1997 and quash and set aside the Award by issuing a Writ of certiorari or any other appropriate writ or order or direction.

Counsel for the Petitioner: Mr.P.NAGESWARA SREE
Counsel for the Respondents : Mr.T.SUDHAKAR REDDY

The Court made the following :

ORDER:

This Writ petition is filed challenging the Award passed by the Industrial Tribunal-Cum-Labour Court at Visakhapatnam in I.D.No.3/94 dated 4-12-1997, wherein, the 2nd respondent-workman was directed to be reinstated into service without back wages, but with continuity of service.

The 2nd respondent-workman joined the service of the petitioner-Indian Oil Corporation Limited, Malkapuram, Visakhapatnam on 1-10-1982 as a Typist. While so, in the month of December,1990, it was found that the 2nd respondent-workman had misappropriated an amount of Rs.36,500/- and after conducting a detailed enquiry into the matter and following due procedure, the 2nd respondent-workman was dismissed from the service of the petitioner-Management with effect from 26-9-1991. Aggrieved by the same, the petitioner filed appeal before the Appellate authority and the same was rejected. Therefore, the petitioner raised dispute before the concerned authorities under the Industrial Disputes Act (for short 'the Act'). In turn, the same was referred to the Industrial Tribunal-Cum-Labour Court at Visakhapatnam. The Industrial Tribunal after considering the matter elaborately, found that though the case against the 2nd respondent-workman stands proved, since he had shown sense of repentance and deposited the entire amount covered by charge, a lenient view was taken. Since according to the workman, he committed such an offence under the influence of the family conditions by invoking provisions of Section 11-A of the Act, felt that the punishment of removal from service was disproportionate to that of the misconduct proved and in view of the conduct of the petitioner in admitting the guilt immediately and also making good of the amount to

the Organisation, directed the Management to reinstate the 2nd respondent into service to any post, lesser than what the workman was holding at the time of his dismissal from service without any back wages, but with continuity of service.

The learned counsel for the petitioner contends that the finding of the Labour Court that in view of the mitigating circumstances, namely, having paid the entire amount found to have been misappropriated by the workman and his sense of repentance disclosed by various documents, material on record besides the adverse circumstances in which he was placed cannot form part for invoking the provisions of Section 11-A of the Act. Therefore, the finding of the Labour Court that the punishment imposed by the Management was disproportionate to that of the misconduct proved is nothing but perverse. The powers under Section 11-A of the Act cannot be invoked for misplaced sympathies and for the financial difficulties purported to have been faced by the workman at the time of commission of the misconduct.

I have gone through the entire Award passed by the Labour Court. It is an admitted fact that the 2nd respondent-workman had admitted the guilt and made good of the loss of Rs.36,500/- immediately and he also wrote number of letters with repentance and sought pardon. Further, it is not disputed by the learned counsel for the petitioner that this was the first incident of this nature on the part of the 2nd respondent-workman. Since the 2nd respondent-workman confessed his guilt and made good of the amounts and he repented, I am of the opinion it cannot be said that the Labour Court was wrong in invoking the powers under Section 11-A of the Act and granting relief of reinstatement without back wages, but with continuity of service.

It is also noticed that he was appointed with effect from 1-10-1983 as Typist. He worked for more than seven years without any blemish and since the misconduct was found, he immediately paid the amount and sought pardon. Taking this into consideration, the Labour Court rightly exercised its powers under Section 11-A of the Act. I am of the considered opinion that no interference can be made with the Award passed by the Labour Court. However, more stringent punishment may be necessary in the facts and circumstances of the case. Therefore, as the petitioner is out of service and the Management paying wages under Section 17-B of the Act, the 2nd respondent shall not be paid differential wages from the date of Award till the

date of reinstatement. However, this entire period shall be taken into consideration for the purpose of pensionary benefits etc., in normal course. I see no reason to interfere with the impugned Award.

Accordingly, the Writ petition is dismissed. No costs.

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(C.V.RAMULU,J)

27-07-2004.

TSY

To

1. The Chairman-Cum-Presiding Officer,

Industrial Tribunal-Cum-Labour Court,

Visakhapatnam.

2. The Secretary,Union of India,

Ministry of Labour, Shram Mantralaya,New Delhi.

3. Two CD copies.